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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/526,439 | 03/03/2005 | Uwe Klaus | 00379P001 WOUS | 3393 |
| 30008 | 7590 | 10/22/2007 | | |
| GUDRUN E. HUCKETT DRAUDT SCHUBERTSTR. 15A WUPPERTAL, 42289 GERMANY | | | EXAMINER MENON, KRISHNAN S | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1797 | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,439

Applicant(s)

KLAUS, UWE

Examiner

Krishnan S. Menon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-37 is/are pending in the application.
- 4a) Of the above claim(s) 19,21,22,25 and 29-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18,20,23,24 and 26-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 18-37 are pending as preliminarily amended on 3/3/05.

Election/Restrictions

Applicant's election with traverse of claims 18,20,23,24,26,27 and 28 is acknowledged. Traversal is on the grounds that the restriction requirement under USPTO rules is improper because the application is a National Stage filed under 35 USC 371.

In response, the US rules were used because applicant filed the application with a preliminary amendment introducing a new set of claims, and canceling all the original claims. However, even if the restriction requirement were made using the PCT rules of lack of unity of invention, the restriction requirement would not have any significant changes, since the subject matter of claim 18, the main independent claim, is unpatentable as anticipated by Herczeg (US 2004/0054890), as will be shown in the art rejection below. Thus a lack of unity of invention is established between the different species claimed. Since claim 18 is not patentable, there is no common special technical feature that is novel linking the species.

The restriction requirement, therefore, is made final.

Claims 19,21,22,25,and 29-37 are withdrawn from consideration.

The non-elected species claims are eligible for rejoinder if the corresponding generic claim(s) are found allowable, and if the species claims depend from, or were amended to include the limitations of, the allowed generic claims. [MPEP 821.04]

Information Disclosure Statement

The information disclosure statement filed 11/18/05 contains several foreign references and fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. The information provided about these references in applicant's specification is not adequate. The foreign references are crossed out from the IDS at this time.

It is requested that applicant provide a brief explanation of their relevance with respect at least to claims 27 and 28 for consideration.

Specification

Applicant's amendment to the specification, submitted 3/3/05 in the preliminary amendment, requires some correction.

(1) Replacement Page 19, paragraph lines 20-21 appears in error for the heading: DESCRIPTION OF PREFERRED EMBODIMENTS. This heading should be in page 20.

(2) To avoid confusion, it is suggested that the insertion of the headings be pointed out to the specific lines and page numbers, as in the following example:

Example: instead of "Replacement Page 1, 1st Paragraph", use:

Insert the following heading at page 1, before the first paragraph, i.e., the paragraph starting with the words "The invention relates ...":

BACKGROUND OF THE INVENTION

(3) Figures 8 A and B, and 11 A-C are not listed under the brief description of the drawings starting at page 19. This may be corrected from ~~Fig. 8~~ to Fig. 8 A&B at line 5 and from ~~Fig. 14~~ to Fig. 11 A-C at line 11, both in page 20.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 18,20,23,24,26 and 27 are rejected under 35 U.S.C. 102(e/b) as being anticipated by Herczeg (US 2004/0045890).

Note: this reference has a WIPO publication, WO 02/58827, published on August 1, 2002, which would make the WIPO publication a 102(b) reference.

Claim 18: Herczeg teaches a hollow fiber membrane cassette comprising a housing (40, generally depicted in figure 1), having two congruent base surfaces and circumferential surfaces as claimed, at least one layer of hollow fibers in the interior

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cavity of the housing (20, 21) and fixedly anchored to the tube sheets (30) within the housing, the outer compartment defined by the housing 40 and delimited by the tube sheets 30 externally surrounds the hollow fibers, fibers are parallel, there are openings for supply/removal of fluids in to the housing cavity (see 201c, etc., in figure 3), and there can be a plane that would not intersect the base surfaces within the outer compartment as claimed.

The fibers are hollow fiber membranes as in claims 20 and 23, substance exchange between the inner and outer compartments is possible only through the hollow fiber membranes as in claim 24, housing has channels (200c, etc) as in claim 26, and the housing cover is a transparent polymer as in claim 27 (paragraph 0031).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Herczeg as applied to claim 18 above, and further in view of Bach (US 4,647,539), Etienne et al (US 5,380,433), Gura (US 20030097087), and/or Boye (US 2003/0178366).

Claim 28 differs from the teaching of Herczeg in the material of the cover, such as which seal itself, or comprised of a semipermeable membrane or filter fabric. The self-sealing material in applicant's specification is silicone or equivalent (see paragraph

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0053 of the Pre-Grant Publication). Bach teaches a flexible housing, or at least part of the housing is made of a flexible or elastomeric material – silicone – see the figures and column 4, lines 39-52. It would be obvious to one of ordinary skill in the art at the time of invention to use the teaching of Bach in the teaching of Herczeg to facilitate movement of the hollow fibers and other advantages as taught by Bach – see the advantages described in column 4. 'Seals itself' is an inherent property of silicone or other elastomeric materials.

Having the housing made of an elastomeric material is well known in the art. Etienne also teaches flexible housing made of material such as silicone – see figures and claims 1 and 2. One would use the teaching of Etienne in the teaching of Herczeg for the advantages taught by Etienne. Boye also teaches the housing partly or entirely made by a flexible membrane, such as made of elastomeric materials. Gura teaches flexible housing, made of elastomeric material such as polyurethane or PVC (equivalent to silicone for self-sealing), for a hollow fiber cartridge for making it wearable – it fits to the contour of the body.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krishnan S. Menon whose telephone number is 571-272-1143. The examiner can normally be reached on 8:00-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R. Sample can be reached on 571-272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'K S Menon', with a stylized, cursive script.

Krishnan S Menon
Primary Examiner
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